ADMINISTRATIVE PROCEEDING
FILE NO. 3-8232

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)
	)
MARTIN B. SLOATE	)

INITIAL DECISION

Washington, D.C.
June 2, 1994

Glenn Robert Lawrence
Administrative Law Judge

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APPEARANCES: Gregory J. Johnson, Dorothy Heyl, Daniel Schnipper, of the New York Regional Office, for the Division of Enforcement.

Ira Lee Sorkin, Joseph R. Rackman, Brian McKenna, of Squadron, Ellenoff, Pleasent, Sheinfeld & Sorkin, for Martin B. Sloate.

BEFORE: Glenn Robert Lawrence, Administrative Law Judge.

These public proceedings were instituted by an order of the Commission dated November 22, 1993 (Order) issued pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) to determine whether allegations of misconduct made by the Division of Enforcement (Division) against Martin B. Sloate (Respondent or Sloate) are true and what, if any, remedial action is appropriate in the public interest.

In substance, the Division alleges that Sloate wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with his role in an insider trading scheme involving transactions in the securities of Shearson Loeb Rhoades (Shearson) and BankAmerica Corp. (BankAmerica) during 1981 and 1986, respectively; and that after a trial, Sloate was permanently enjoined on June 30, 1993, by consent, by the United States District Court for the Southern District of New York, from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Sloate, in his amended answer to the Order, admitted the specific allegations contained therein and denied only the general allegation that he wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by engaging in an insider trading scheme.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon my observation of the various witnesses that testified at the hearing that was held in New York City on March 7, 1994, as well as the argument and proposals of facts and law of the parties and the relevant statutes and regulations.

Findings of Fact

Sloate, Weisman & Murray & Co. Inc. (Sloate Weisman) has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since June 1974. [Joint Exhibit S-1 (Ex. S-1) ¶ A.1] Shearson and BankAmerica, at all times relevant herein, were public companies whose common stock was traded on the New York Stock Exchange. [Ex. S-1 ¶ A.2, A.3]

The Commission instituted suit in the United States District Court for the Southern District of New York on January 14, 1991. It alleged that Respondent Sloate violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by engaging in an insider trading scheme in which Sloate exploited material, non-public information concerning Shearson and BankAmerica during 1981 and 1986. The information was alleged to have been provided by Dr. Robert Willis, a psychiatrist, from Joan Weill, one of his patients. [Division Exhibit (Div. Ex.) 3]

The court, after a trial, found that Sloate violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in both 1981 and 1986. It further found that Sloate acted with scienter in regard to the insider trading scheme. [Ex. S-1 ¶ A.38] By order dated June 30, 1993, the court enjoined Sloate, by consent, from further violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. SEC v. Willis, 825 F.Supp. 617 (S.D.N.Y. 1993). [Ex. S-1 ¶ A.39] Sloate paid $161,185.91 in disgorgement, interest and penalty pursuant to the order of the court. Willis, 825 F.Supp. at 622. In defending these matters, the respondent incurred $2,000,000 in legal fees. [Transcript page (Tr.) 196]

Sloate has been a registered broker since the early 1960s. [Ex. S-1 ¶ A.4] Throughout the 1980s and until May 1993, Sloate was a principal and president of Sloate Weisman. [Ex. S-1 ¶ A.4] From about 1979 through January 21, 1994, Sloate was Sloate Weisman's chief compliance officer and was responsible for ensuring that the firm and employees complied with the securities laws. [Ex. S-1 ¶¶ B.4, B.6] From 1989 through 1991, Sloate earned annual commissions at Sloate Weisman of between $600,000 and $700,000. [Tr. 205] Apart from the allegations in this case, Sloate has never been charged with any wrongdoing in the securities industry. [Ex. S-1 ¶ A.4]

On January 21, 1994, Sloate resigned from Sloate Weisman to associate with Axiom Partners, Inc. (Axiom Partners), a registered broker-dealer. [Ex. S-1 ¶ B.4] At the time, Sloate had approximately 970 customers with a portfolio value of $175 million. [Tr. 137] The National Association of Securities Dealers has since prohibited Sloate from associating with Axiom Partners, pursuant to a statutory disqualification. [Tr. 131, 148, 165] While Sloate does not directly communicate with most of his former customers, they are in contact with Harvey Hyman at Axiom Partners. [Tr. 190] Clients of Sloate who testified at the hearing still considered Sloate to be their broker. [Tr. 114-115; 172-173; 174] Sloate currently has no employment plans and no "idea what [he] could even do" outside the securities industry. [Tr. 152] He testified at the hearing: "all I want to do is be able to stay in the business." [Tr. 206]

One of Sloate's customers during most of the 1980s was Dr. Robert Willis. Between 1980 and 1987, Dr. Willis had a psychiatrist-patient relationship with Joan Weill (Mrs. Weill), the wife of Sanford I. Weill (Weill). Weill had a relationship of

trust and confidence with his wife and had a history of confiding in her about his business affairs. [Ex. S-1 ¶¶ A.5, A.6, A.8] From about March 20, 1981, through April 20, 1981, Weill, then chief executive officer (CEO) of Shearson, and James D. Robinson, III, then CEO of American Express Company (American Express), held confidential discussions involving a possible merger of Shearson and American Express. [Ex. S-1 ¶ A.7]

In early January 1986, Weill developed an interest in becoming the CEO at BankAmerica. Along those lines, Weill, between January and March 1986, held confidential meetings with lawyers, investment bankers and BankAmerica directors. At or about January 29, 1986, Weill received a letter from Shearson captioned "Commitment to Place $1 Billion of Equity Capital for BankAmerica Corporation Under Certain Circumstances." [Ex. S-1 ¶¶ A.23, A.24] Weill, in confidence, told his wife: (a) in March and April 1981 that he was negotiating the possible merger of Shearson and American Express; and (b) from early January through March 1986, about his efforts to become CEO of BankAmerica and the financial backing of Shearson. [Ex. S-1 ¶¶ A.9, A.25, A.26]

Mrs. Weill, within the context of her psychiatrist-patient relationship with Dr. Willis, frequently conveyed confidences to Dr. Willis concerning her husband's business plans. In March and early April 1981, Mrs. Weill disclosed to Dr. Willis information concerning the proposed merger of Shearson and American Express, and between January and March 1986, she disclosed to Dr. Willis the progress of Weill's BankAmerica plan. [Ex. S-1 ¶ A.10, A.27]

While in possession of material, non-public information concerning the merger negotiations between Shearson and American Express and Weill's

BankAmerica plans and in breach of his fiduciary duty to Mrs. Weill, Dr. Willis, through Sloate, in accounts at Sloate Weisman, purchased (a) 2,100 shares of Shearson common stock between April 3 and April 16, 1981 [Ex. S-1 ¶ A.11]; and (b) 13,000 shares of BankAmerica common stock between January 14 and February 6, 1986, in at least thirteen separate transactions. [Ex. S-1 ¶¶ A.29, A.30]

In further breach of his fiduciary duty to Mrs. Weill, Dr. Willis, in or about April 1981 and January 1986 communicated to Sloate material, non-public information concerning (a) the merger negotiations between Shearson and American Express, and (b) Weill's BankAmerica plans, respectively. Dr. Willis told Sloate that the source of the confidential information was a patient who was a member of the Weill family. [Ex. S-1 ¶¶ A.12, A.28]

Sloate knew, or should have known, that Dr. Willis breached the fiduciary duty he owed a patient by disclosing the non-public information to Sloate that had been confided in Dr. Willis. [Ex. S-1 ¶ A.13]

Between April 9 and April 14, 1981, Sloate, while in possession of the material, non-public information concerning the merger negotiations between Shearson and American Express, purchased 2,200 shares of Shearson common stock. Sloate's Shearson profits were at least $3,758. [Ex. S-1 ¶ A.14] Between January 22 and February 11, 1986, Sloate, while in possession of the material, non-public information concerning Weill's BankAmerica plans, purchased 8,500 shares of BankAmerica common stock on seven different days over a two-week period. Sloate sold these shares for a profit of at least $8,435. [Ex. S-1 ¶ A.31]

In addition to buying Shearson and BankAmerica securities for his own account while in possession of the material, non-public information

misappropriated from Mrs. Weill, Sloate (a) told others, including, Kenneth Stein (Stein), a friend and customer, and Howard Kaye (Kaye), Sloate's neighbor and a prospective customer, about the confidential information Sloate had obtained from Dr. Willis; and (b) executed the purchase of Shearson securities for at least one customer and solicited at least 16 customers to purchase BankAmerica securities. [Ex. S-1 ¶¶ A.17, A.33, A.34, A.35, B.7, B.8]

On April 14, 1981, one Sloate customer bought 400 shares of Shearson common stock, which she sold on April 21, 1981 for a profit of approximately $5,229. [Ex. S-1 ¶ B.7] On April 14 and 15, Stein bought 2,600 shares of Shearson common stock, which he sold on April 21, 1981. [Ex. S-1 ¶ A.18] Between January 22, 1986 and February 20, 1986, fifteen Sloate customers purchased a total of 29,850 shares of BankAmerica common stock and 125 call options on BankAmerica common stock in their Sloate Weisman accounts. [Ex. S-1 ¶¶ A.35, B.8] In addition, Stein bought 4,000 shares. [Ex. S-1 ¶ A.34, B.8] The BankAmerica transactions resulted in profits of at least $52,300. [Ex. S-1 ¶ A.35]

Sloate told Kaye, his neighbor, that he had obtained information regarding BankAmerica from a psychiatrist, who received it from a patient. Kaye never had an account at Sloate Weisman before February 10, 1986, and Kaye's purchase of 2,000 shares of BankAmerica stock was the first transaction in his account at Sloate Weisman.[1] [Ex. S-1 ¶¶ A.33, B.8]

Sloate Weisman generated $16,950 in commissions on the Shearson and BankAmerica transactions executed for Sloate's customers, including Dr. Willis,

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[1]Sloate did not admit at the hearing that he tipped any information to Kaye, insisting that Kaye had simply turned over $25,000 to him for investing. [Tr. 210]

Stein, and Kaye. Sloate received at least $7,000 in commissions from Sloate Weisman for these transactions, $6,000 from the BankAmerica transactions. [Ex. S-1 ¶¶ A.21, A.36]

Sloate was consciously aware of the actions he undertook in accomplishing the admitted violations. Thus, for example, Sloate admits that he was consciously aware that he was talking to Dr. Willis during the conversations in which the doctor conveyed to him the material non-public information about BankAmerica; that he was soliciting customers to purchase Bankamerica stock; and that he placed the orders for his own accounts. [Tr. 162-63] He was not under the influence of alcohol or drugs or any mental delusions or weakness at these times, or when he engaged in the Shearson transactions and conversations in 1981. [Ex. S-1 ¶ B.5]

Mrs. Weill, as well as the public's confidence in the integrity of the securities markets, was injured by Sloate's flagrant and repeated securities law violations. [Tr. 33, 58, 121-22] Mrs. Weill "was devastated, she felt violated, she felt like she was raped. ... [I]t affects her to this day." [Tr. 33]

Weill has been an active manager and participant in the brokerage industry and securities markets for almost thirty years. Testifying on behalf of the Division, Weill explained that insider trading erodes public confidence in the market, because participants are improperly dealing with different levels of knowledge.[2] [Tr. 58] Dr. Willis pleaded guilty to two counts of securities fraud on December 20, 1991. [Div. Ex. 7]

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[2]Sloate's attorney conceded that insider trading "affects the market place insofar as the public is entitled to know there's fairness in the market place." [Tr. 58]

On December 7, 1990, Sloate, through his attorneys, forwarded to the Commission a document entitled "Submission on Behalf of Martin Sloate Under Securities Act Release No. 5310," commonly referred to as a Wells submission. In his submission, Sloate denied that he engaged in insider trading in connection with trading in either Shearson or BankAmerica securities. [Div. Ex. 9]

On May 5, 1993, Sloate testified at the injunction trial that "I have no memory at all why I bought Shearson stock" in 1981. [Div. Ex. 6 at 359] With respect to BankAmerica, Sloate testified that Dr. Willis told him Weill was interested in ^X qnistrative proceeding. At the hearing, Sloate conceded that in January 1986, Dr. Willis told Sloate that the source of his (Dr. Willis') information about Weill's interest in BankAmerica was a patient who was a member of the Weill family. [Tr. 158-59] At the hearing, Sloate, also acknowledged that when Dr. Willis called him to buy Shearson he, Sloate, should have seen a red flag and "was wrong not to have taken it more seriously at the time." [Tr. 129] Sloate further testified that "I recognize that I should have known at the time that it was illegal and wrong. I sure do recognize it now." [Tr. 151] Sloate now concedes that "I was stupid in the sense I really should have known better." [Tr. 151]

Conclusions of Law

It is well established that insider trading is unfair and destructive of investor confidence. Cady Roberts & Co., 40 S.E.C. 907 (1961); SEC v. Texas Gulf Sulfur, 401 F.2d 833 (2d Cir. 1968) (en banc), cert. denied, 394 U.S. 976 (1969); Schoenbaum v. Firstbrook, 405 F.2d 215 (2nd Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969).

As stated in the House Report on the Insider Trading Sanctions Act of 1984, insider trading threatens the securities markets "by undermining the public's expectations of honest and fair securities markets where all participants play by the same rules." And, with respect to the misappropriation of material, non-public information, "conversion for personal gain of information lawfully obtained abuses relationships of trust and confidence and is no less reprehensible than the outright theft of non-public information." House Rep. No. 98-355, Sept. 15, 1983.

Fully aware of his actions, Sloate willfully[3] violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that he, directly or indirectly, in connection with the purchase or sale of securities, namely the securities of Shearson and BankAmerica, by use of the means or instrumentalities of interstate commerce or the mails, employed devices, schemes and artifices to defraud, made untrue statements of material facts, omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices and courses of business which operated as a fraud or deceit.

Once a respondent has been found to have violated the federal securities laws, it becomes necessary to consider what sanctions, if any, are in the public interest.

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[3]Willfulness in the context of these matters does not require a showing that the party intended to violate the law. Rather, it is sufficient to show that the party knew what he was doing. See Cady Roberts, 40 S.E.C. at 917, International Shareholders Services Corp., 9 SEC Docket 820 (June 8, 1976), Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949).

In assessing a sanction, due regard must be given to the facts and circumstances of each particular case, since sanctions are not intended to punish a respondent but to protect the public from future harm. See Berko v. SEC, 316 F.2d 137, 141 (2d Cir. 1963), and Leo Glassman, 46 S.E.C. 209, 211 (1975). Sanctions should also serve as a deterrent to others. Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976).

In imposing administrative sanctions, the Commission may take into account such factors as:

> ...the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that his occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd, 450 U.S. 91 (1981).

Consistent with Steadman, the Division argues that the evidence overwhelmingly shows that Sloate wilfully violated the security laws and that the sanction should be a bar from associating with any broker or dealer. What follows is a review of some of the public interest factors urged in favor and in opposition to such a bar.

Respondent argues, in substance, that the bar should be minimal inasmuch as there was a low level of usage of the insider trading information. However, as noted in the admitted facts there were a substantial number of trades made by Sloate, Willis and Sloate's customers. These trades were effected by Sloate using the inside information. The argument raised by Sloate is that the amount of shares traded was insignificant considering the total number of shares traded in the

market at the time. He further argues that the trades caused no market impact. As the Division persuasively argued, in his struggle to diminish the egregiousness of his misconduct Sloate disregarded the fact that he was the person responsible for assuring that Sloate Weisman complied with the federal securities laws at the same time he was generating profits in violation of these laws. These arguments are insubstantial. The prohibition against insider trading is not conditioned by a showing that the market was impacted or that the insider trades were a substantial percentage of the total trades made at the time.

Sloate further argues that his acts were not egregious inasmuch as only two customers knew of the insider trading. This is an overly narrow construction of the concept of egregiousness. Numerous Sloate customers, with or without the knowledge of the insider trading, were favored with Sloate's advice that permitted them to trade using inside information to subvert the market. Once the fact of such trading becomes known to the investing public, there is a substantial loss of confidence in the fairness of the system. Additionally, the argument raised by respondent that the violations were not recurrent is insubstantial given the many trades that were executed in 1981 and 1986.

The Division argues that Sloate acted with the highest degree of scienter. Respondent argues, citing Bruce L. Newberg, 54 SEC Docket 2506 (1993), in substance, that such a high degree of scienter equates to a respondent who considers the security laws a joke. The trades and sales made in this case by Sloate, taking into account the source of his information, suggest that in these instances, he considered the security laws a joke. For example, the Division points out that Sloate asserted that there is nothing in the record showing he knew that

the inside information he acquired from Dr. Willis was procured through the violation of Mrs. Weill's confidence. But as the Division noted:

> [t]o the contrary, ... Sloate admitted that he knew or should have known that the inside information concerning the Shearson/American Express merger and Weill's BankAmerica plans had been conveyed in confidence to Dr. Willis. Therefore, it cannot be disputed that Sloate knew, or should have known, that the inside information he received from Dr. Willis was conveyed to Dr. Willis, in confidence, by a patient who was a member of the Weill family. [Division Reply at 3]

Accordingly, the Division is justified in labeling Sloate's conduct as the highest degree of scienter.

The identification by the Division of Sloate's conduct as a scheme also appears well justified. There were repetitive acts of trading and procuring sales of securities based on inside information obtained by a psychiatrist from a patient and transmitted to Sloate. Webster's New World Edition Dictionary[4] defines a scheme as "a carefully arranged and systematic program of action." It appears that respondent embarked on a systematic and well arranged course of trading for himself and his customers whenever he received inside information from Dr. Weil.

The Division argues, in substance, that respondent's original answer to the order for public proceedings, as well as the Well's submission and the testimony at the injunction trial, denied some material facts that were later admitted at the instant hearing and that these misstatements reflect negatively on Sloate's character.[5] Sloate responds, in effect, that some of the inconsistencies were at the advice of counsel and not due to deliberate misstatements. This response is

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[4]1959 Edition.

[5]In his amended answer, Sloate admits the wrongdoing.

inadequate. It is considered that Sloate is responsible for the veracity of his utterances. If his counsel suggested to him and he complied with the advice that he prevaricate, that is clearly improper on the part of both counsel and the respondent.

In its argument at the hearing, the Division asks for a sanction of a bar from all aspects of the securities industry with a right to reapply in four years. [Tr. 20] In its post-hearing brief it asks for a bar without a right to reapply.[6] There has been no explanation offered by the Division for the increased severity of its position. The respondent argues, in substance, citing Klopp v. SEC, 427 F.2d 455 (1790), that Sloate has established through his good deeds mitigating circumstances that should be considered.[7] Sloate showed through testimony at the hearing through his customer Goodfriend, a certified public accountant, that he ethically and efficiently served a substantial number of clients over a long span of time. Similar testimony was given by Harvey Goldberg, a former Justice Department lawyer, as well as Dr. Miles Berens.[8]

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[6]The Division cites Adrian Antoniu, 39 SEC Docket 1238, 1244-45 (Dec. 3, 1987), for the proposition that the public interest requires that an employee of broker-dealer who traded on inside information be barred from association with any broker or dealer. However, Antoniu is supported by findings, among others, that the respondent "lack[ed] a sense of real guilt about his crimes." Antoniu, 39 SEC Docket at 1245. By contrast, I have found that the respondent in the instant case demonstrated contrition.

[7]Klopp stands for the proposition that a defendant's exemplary life compared with accuser's undistinguished reputation may be significant in making credibility determinations. This is not on point here but there is some analogy that can be made to the instant case.

[8]The Division argues in its reply that this testimony should be discounted: "Sloate's reliance on their testimony is unjustified. None of these witnesses testified about Sloate's reputation for honesty, let alone that Sloate has a reputation as a person of high moral character. To the extent that Messrs. Kessler, Weisman, and Goldberg testified favorably

It is considered that this testimony by Sloate's customers, as well as the obvious contrition exhibited in testimony during the hearing[9] are mitigating factors that must be considered in Sloate's favor.[10] Further, the parties have agreed that the only wrongdoing Sloate was charged with in his long career were the allegations in the instant case.[11] Additionally, the respondent's enviable record of charitable works as reflected in the testimony of Dr. Michael Fetel [Tr. 122-127] and Dennis Kessler [Tr. 91-99] is considered a further mitigating factor.

Sloate paid $161,185.91 pursuant to the order of the court in the injunction suit. [Ex. S-1 ¶ B.1] This included a penalty of $60,800 as well as disgorgement of profits made by Sloate and his customers as well as interest.[12] [Ex. S-1 ¶ B.1]

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about their personal associations with Sloate, their testimony must be given little or no weight for numerous reasons. First, none of them, nor any other witness proffered by Sloate for that matter, had first-hand knowledge of Sloate's violative conduct." [Division Reply at 4] The Division cites Bruce L. Newberg, 54 SEC Docket at 2521. However, in Newberg Judge Murray found after listening and observing the character witnesses that they lacked objectivity. I make no such finding in this case.

[9]For example, Sloate said "I recognize that I should have known at the time that it was illegal and wrong. ... I was stupid in the sense I should have known better." [Tr. 151]

[10]Leo Glassman, 46 S.E.C. at 211.

[11]The Division in its reply brief places reliance on Edward Michael Furlong, Admin. Proc. File No. 3-6831 (March 9, 1988). In Furlong, a registered representative with an otherwise flawless thirty-three year history in the securities industry was barred permanently for violating Section 10(b). However, Furlong is distinguishable from the instant case. In Furlong, the broker was sentenced to six years imprisonment, 18 months to be served, for a fraudulent scheme to manipulate stock prices.

[12]Citing Robert D. Boose, 48 SEC Docket 351, 358-59 (1991) and Jones & Ward Securities, Inc., 56 SEC Docket 0265, 0303 (1994), the Division argues in it reply that I should not take into account the cost to the respondent in penalties and attorneys fees. I do not read these cases as a bar to considering actual costs to a respondent in assessing a penalty. In Boose, Judge Murray found "the fact that he served two long years in prison does not address the issue of whether it is in the public interest to have him as an active participant in the security industry." 48 SEC Docket at 359. Ultimately,

It is considered that this payment by Sloate should be considered in the respondent's favor in assessing the public interest question.[13] Certainly, any broker knowing of the costs here to Sloate, would think twice before embarking on a course of insider trading.

Taking into account the factors discussed, it is considered in the public interest pursuant to Sections 15(b) and 19(h) of the Exchange Act, that there be imposed against Sloate a remedial sanction in the form of a bar to association with any broker or dealer, with a right to reapply after one year. [14]

ORDER

IT IS ORDERED that Martin B. Sloate, pursuant to Sections 15(b) and 19(h) of the Exchange Act, be remedially sanctioned in the form of a bar from association with any broker or dealer, with a right to reapply after one year. This sanction is imposed as necessary and appropriate in the public interest, for the protection of investors.

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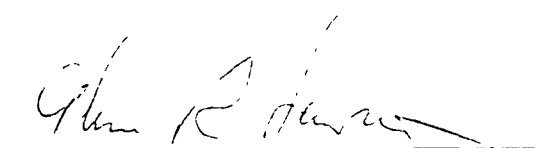
the concern is the public interest and the sanction imposed in the instant case is predicated on that consideration. Further, in Jones & Ward, relied upon by the Division, Chief Judge Blair stated in denying a Division request for a $10,000 penalty that it is "not considered necessary in light of the costs incurred by the respondents in connection with this and related proceedings against them." 56 SEC Docket at 0305.

[13]Judge Pollack in a letter to Division counsel and former respondent counsel stated that "the settlement (in the injunction case) [was] the appropriate measure of relief to be imposed to satisfy the publics interest." [Respondent Exhibit 1] Judge Pollack expressed the view that, having heard the testimony and arguments, Sloate should not be deprived of his status as a registered representative. However, the Judge in his letter reserved to the SEC its administrative remedy.

[14]The Division asks that I also suspend Sloate from association with an investment adviser or investment company. In my view, however, such action cannot be taken in a proceeding under Section 15(b)(6) of the Exchange Act.

This order shall become effective in accordance with and subject to the provisions of Rule 17(f) of the Rules of Practice.

Pursuant to Rule 17(f) of the Rules of Practice, this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.



Glenn Robert Lawrence
Administrative Law Judge

Washington, D.C.
June 2, 1994